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Counterclaim Plaintiff Radiancy,
Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TRIA BEAUTY, INC.,

Plaintiff,

vs.

RADIANCY, INC.,

Defendant.

Case No. CV-10-5030 RS

**DECLARATION OF BRENDAN J.
O'ROURKE IN SUPPORT OF
MOTION BY RADIANCY, INC.
FOR LEAVE TO FILE FIRST
AMENDED COUNTERCLAIMS**

Date: September 8, 2011

Time: 1:30 p.m.

Ctrm: 3

RADIANCY, INC.,

Counterclaim Plaintiff,

vs.

TRIA BEAUTY, INC.

Counterclaim
Defendant.

Honorable Judge Richard Seeborg

JURY TRIAL DEMANDED


1 I, Brendan J. O'Rourke, declare:

2 1. I am an attorney licensed to practice law in the State of New York,
3 admitted *pro hac vice* in this Court, a member of Proskauer Rose LLP, and counsel
4 to defendant-counterclaim plaintiff Radiancy, Inc. ("Radiancy"), in this action. I
5 have personal knowledge of the facts set forth below and, if called as a witness,
6 would testify to those facts.

7 2. Radiancy seeks to file its proposed First Amended Counterclaims
8 (herein the "Amended Counterclaim"), which is attached to this declaration as
9 Exhibit A. The Amended Counterclaim includes: (1) additional factual allegations
10 against plaintiff-counterclaim defendant Tria Beauty, Inc. ("TRIA"); and (2)
11 allegations against proposed counterclaim defendant, Kim Kardashian, TRIA's paid
12 spokesperson and celebrity endorser, concerning the materially false and misleading
13 statements she has made about the efficacy of the TRIA Laser Hair Removal
14 System. Specifically, Radiancy has augmented its allegations concerning the TRIA
15 Skin Clarifying System and also added allegations concerning advertisements for
16 the TRIA Laser Hair Removal System that ran, or were discovered, after Radiancy
17 filed its original counterclaims.

18 3. Radiancy provided a draft copy of the proposed Amended
19 Counterclaim to TRIA on June 10, 2011, and sought TRIA's consent to file the
20 amended pleading. On June 24, 2011, TRIA's counsel responded in writing that
21 TRIA was only prepared to stipulate to the filing of the proposed amendments
22 which were asserted against TRIA, and to the extent the proposed amendments
23 related to claims asserted against Kim Kardashian individually, TRIA would be
24 willing to stipulate to the new allegations but would not stipulate to the addition of
25 Ms. Kardashian as a party. Because TRIA would not consent to the filing of
26 Radiancy's Amended Counterclaim, Radiancy notified TRIA on July 8, 2011 that it
27 intended to seek the Court's leave for filing.

Executed in New York, New York on August 3, 2011.


Brendan J. O'Rourke

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